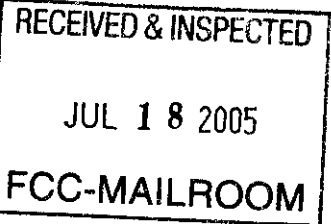


DOCKET FILE COPY ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554



**Request of The National Association of  
Professional Insurance Agents  
For Declaratory Ruling  
Re: CG Docket No. 02-278**

File No. \_\_\_\_\_

**NATIONAL ASSOCIATION OF PROFESSIONAL INSURANCE AGENTS  
REQUEST FOR DECLARATORY RULING**

Patricia A. Borowski  
Timothy K. Kovac  
National Association of  
Professional Insurance Agents  
400 N. Washington Street  
Alexandria, VA 22314  
Phone: (703) 836-9340  
Fax: (703) 836-1279  
Email: patbo@pianet.org  
timko@pianet.org

July 12, 2005

No. of Copies rec'd \_\_\_\_\_  
List ABCDE \_\_\_\_\_

094

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**Request of The National Association of  
Professional Insurance Agents  
For Declaratory Ruling**

**File No.** \_\_\_\_\_

To: Ms. Monica Desai, Chief, Consumer and Governmental Affairs

**NATIONAL ASSOCIATION OF PROFESSIONAL INSURANCE AGENTS  
REQUEST FOR DECLARATORY RULING**

Pursuant to § 1.2 of the rules governing the Federal Communications Commission<sup>1</sup>, the National Association of Professional Insurance Agents (PIA) hereby requests the Commission to issue a declaratory ruling modifying the application of the *Telephone Consumer Protection Act of 1991 (TCPA)*.<sup>2</sup> In a recent clarification, the FCC stated that the established business relationship (EBR) exemption allows insurers to contact policyholders throughout the term of an insurance policy plus 18 months. Insurance agents, however, were restricted to contact within 18 months of the placement of the insurance product.<sup>3</sup> PIA asks the FCC to reconsider this separate treatment for independent property and casualty insurance agents, as these agents serve as the contact between insurance companies and their insureds and the legal obligations of independent agents to their clients require continual contact throughout the duration of a policy. For

---

<sup>1</sup> 47 C.F.R. §1.2

<sup>2</sup> 47 C.F.R. §64.1200

this reason, it is imperative that independent property and casualty insurance agents be granted the same latitude of contact granted to insurance carriers.

### ***Discussion***

In the FCC's Reconsideration Order dated February 18, 2005, the Commission explained the need for continuing the EBR exemption for insurers by stating that "the existence of financial agreements, including... insurance policies... constitute ongoing relationships that should permit a company to contact the consumer to, for example, notify them of changes in terms of a contract or offer new products and services that benefit them."<sup>4</sup> For this reason, the Commission stated that insurance companies may contact a policyholder for the duration of the business relationship and 18 months after that relationship is concluded.

Insurance agents were treated differently. The Commission stated that agents may only call those policyholders with whom they have arranged a policy within 18 months of the day the policy is placed by the agent. While we recognize and appreciate the Commission's goal of protecting consumer rights, this position fails to consider: the legal and business operative realities of the entire insurance sector (and particularly the importance of independent agents throughout the term of the insurance policy) and the expectation of service for policyholders to which agents (especially independent insurance agents) are held throughout the term of the policy. By failing to allow independent insurance agents to contact their clients throughout the term of the policy,

---

<sup>3</sup> *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Second Order of Reconsideration, FCC 05-28, CG Docket No. 02-278 (February 18, 2005) ("Reconsideration Order")

<sup>4</sup> *Reconsideration Order*, ¶ 26

the FCC rules provide a disservice to the very people that they are attempting to protect through an FCC rule structure that directly and clearly conflicts with existing law benefiting the consumer.

There are several reasons for this. First, independent property and casualty insurance agents (herein after referred to as “independent agents”) are appointed by more than one insurance carrier for each line of insurance they offer. A crucial obligation they assume by accepting the appointment of an insurer is the execution of all directives of the insurer. Much of these insurance company mandates require ongoing services, i.e. customer contact. Therefore, when a consumer contacts an independent agent, it is for the expertise they provide and the wide array of products they have to offer, because they can find insurance coverage that responds to the full spectrum of varying insurance needs each insurance consumer will have. This allows the consumer to receive, in one office, the best coverage for their particular insurance needs because the independent agent can place different coverages with different insurers for the benefit of the consumer (i.e., one company for auto, another for homeowners insurance, another for an umbrella policy, another for life insurance, etc.). The independent agent pulls this all together in one convenient package for the consumer that satisfies the consumer’s insurance needs quickly and professionally. Further, this compilation of coverage is completed over time and with the consumer since it involves more than one policy of insurance from more than one insurer. So, while the consumer becomes the policyholder of the various insurers, it is the independent agent that they view as their contact for questions regarding their insurance portfolio. It is the agent that the consumer turns to for advice and questions about their policies and future needs, and it is the independent agent that the

consumer expects to provide customer service throughout the term of their insurance products to include (as respects independent insurance agents) claims, audits, renewals and other “back-end” insurance services. The customer thinks of the independent agent as his or her personal contact for all of their insurance needs regardless of the policy in question. In reality, the consumer expects more contact from the agent than from the actual insurer(s).

The law also recognizes this close professional relationship. Independent insurance agents have legal obligations to offer products to consumers that fit their insurance needs. Agents can be held liable for failing to offer adequate levels of insurance to their customers. This includes adding higher levels of coverage to meet new risks that a policyholder obtains (i.e., a new pool, a new boat, a new car). If an independent agent sees that a policyholder is building a new pool in their backyard, for instance, the agent **must** contact that policyholder and offer them additional coverage to cover the risks associated with the pool. Further, current law expects the independent insurance agent to make current customers aware of the coverage limits of the current policies placed, and the availability of coverages that are available through them and that would respond to those non-covered insurance needs.

These legal obligations and expectations are similarly articulated in all 55 insurance jurisdictions of the U.S. The FCC ruling would make such communications impossible if the need arises just 18 months and one day after the *original placement* of insurance, *even if the insured has renewed the same policy for several years and the policy is still in place*. For example, some insurance policies placed today in personal

lines are three-year policies. FCC rules will not permit our independent agent members to contact the policyholder after 18-months, but current law demands that they do.

A second example also demonstrates the need of independent agents to contact their clients beyond the 18-month restriction. In many cases, a claim from an insurance policy may be filed or fail to be resolved beyond the 18-month period. In these cases, the independent agent has an absolute duty to communicate with the policyholder even when the policies have terminated, and the consumer may not be an ongoing customer of the agent.

Additionally, if a carrier becomes insolvent, the agent has a legal obligation to notify all consumers that it placed with that carrier of the insurer's insolvency and how that affects the consumer's coverage. If this were to happen outside of the FCC's 18-month period, it would create a communication void as the insurer is no longer in business, yet the agent is not permitted to contact the consumer by phone to discuss the consumer's options.

Finally, the customers of independent agents, especially larger customers and those in rural and small town settings, expect more personal service. This is exactly why they selected our member as the agent for their insurance rather than buying their coverage "direct" from an insurer online or by mail. This is also why they chose an agent that offered more than one insurer's insurance product offerings. These customers want their agents to call them to notify them of changing insurance needs, new products that will lessen their insurable risks, and to generally show an appreciation for their business. Prohibiting contact after 18 months from the original placement makes this impossible.

## ***Conclusion***

PIA believes the Commission based its decision on insurance agents on the assertion that *typical* insurance agents are only involved in the original contract.<sup>5</sup> This fails to recognize that the *overwhelming majority* of PIA's 11,000 member agencies (and independent property and casualty agencies in general) continually provide contact and support to all of their commercial and personal insurance customers for the life of the *insurance relationship*, as currently defined by law and directed by the insurers with which they conduct business. Since it seems that the Commission's original decision stemmed from old and dated testimony primarily stemming, at that time, from the state of the life insurance industry, which (then and now) operates wholly separate and completely differently from the commercial and personal property and casualty insurance industry, it is imperative that the Commission reconsider its current ruling in reference to independent property and casualty insurance agents.

As demonstrated above, one of the most important aspects of an independent insurance agency's service most particularly in the property and casualty industry (but applicable to any line of insurance that they offer including Life and Health) is to assure that its clients are receiving the most comprehensive and up-to-date insurance coverage and information about insurance coverage. Furthermore, insurance agents have, as a matter of contractual obligation to their insurers, many statutory and common law obligations to their clients to provide products and services that are most closely aligned with their present insurance needs. In essence, the agent is the "face" of the insurance carrier -- in many cases the agent being the only point of contact utilized by the insured.

---

<sup>5</sup> See; *Reconsideration Order*, at nt. 77 (Quoting; *H.R. Rep. No. 102-317 at 14 (1991)*)

Being unable to contact current clients upon learning of a potential new risk or product line would destroy the more than one hundred-years-old common law rule that insurance agents have exclusive and paramount ownership of their book of business superior to all, *including* the insurance carrier. We further add that these special insurance modifications have long been recognized and accommodated in state commercial laws addressing the same areas as FCC's TCPA.

It appears that the original intent of the TCPA was to prevent consumers from continually having to deal with telemarketing "cold calls" in the concept of prospecting new customers. PIA is sympathetic to such cause, and supports the Commission's legislation on this issue. However, insurance agents *do not "cold call" their current clients*. Rather, most agents contact their clients when they have a new product available that, based upon all insurance information on file, might provide better or more efficient coverage for the client. Such calls are not at all the type of outbound telemarketing cold-calls sought to be prevented, but rather, are relationship management calls made in an effort to provide the best quality service to the agent's customer base.

PIA strongly encourages the Commission to revisit and reconsider this issue as it is of the utmost importance to our nationwide membership base. Specifically, PIA seeks the Commission's expedient declaration clarifying that insurance agents, like insurance carriers, may contact policyholders with whom they have an established business relationship throughout the term of the insurance policy, plus 18 months.

If the Commission requires additional facts or evidence to make a ruling, please contact us, as we will promptly comply with any additional requests for information.



Respectfully Submitted,

By: 

Patricia A. Borowski  
Timothy K. Kovac  
National Association of  
Professional Insurance Agents  
400 N. Washington Street  
Alexandria, VA 22314  
Phone: (703) 836-9340  
Fax: (703) 836-1279  
Email: [patbo@pianet.org](mailto:patbo@pianet.org)